

EXHIBIT C

From: [Dickinson, Charles](#)
To: [Podoll, A. Joshua](#); [Obaro, Bambo](#); [Musser, Susan](#)
Cc: [Brenner, Nathan](#); sonia.pfaffenroth@arnoldporter.com; [Sullivan, Luke](#); [Anderson, Barrett](#); [ChristopherKayser-contact](#); [Hall, Laura](#); [Pai, Rohan](#); [TaniaManners-contact](#); [Hiemstra Cheryl](#); [Nord Tim D](#); matthew.wolf@arnoldporter.com; [Mainigi, Enu](#); [Perry, Mark](#); [Barrington, Luna](#); john.holler@arnoldporter.com; [Wint, Corene](#)
Subject: RE: 3:24-cv-00347-AN Federal Trade Commission et al v. Kroger Company et al | Status Conference
Date: Saturday, August 10, 2024 4:49:10 PM

Josh,

We can work around Mr. Silva's unavailability. Mr. Broderick being unavailable the entire first week of trial is more problematic, since all, or nearly all, of Plaintiffs' case-in-chief is likely to take place that first week of trial. Can you provide more information about the reason Mr. Broderick cannot be available to testify before the second week of trial?

Sincerely,
Charlie

From: Podoll, A. Joshua <APodoll@wc.com>
Sent: Friday, August 9, 2024 6:16 PM
To: 'Obaro, Bambo' <Bambo.Obaro@weil.com>; Musser, Susan <smusser@ftc.gov>
Cc: Brenner, Nathan <nbrenner@ftc.gov>; sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke <Luke.Sullivan@weil.com>; Dickinson, Charles <cdickinson@ftc.gov>; Anderson, Barrett <banderson1@ftc.gov>; ChristopherKayser-contact <cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai, Rohan <rpai@ftc.gov>; TaniaManners-contact <tmanners@lvklaw.com>; Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; matthew.wolf@arnoldporter.com; Mainigi, Enu <EMainigi@wc.com>; Perry, Mark <Mark.Perry@weil.com>; Barrington, Luna <Luna.Barrington@weil.com>; john.holler@arnoldporter.com; Wint, Corene <cwint@ftc.gov>
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Hi Susan –

Mr. Curry and Mr. Huntington have no blackout dates. Mr. Broderick is unavailable 8/26 – 8/30. Mr. Silva is unavailable 8/28 – 8/30, and 9/9-9/11.

Best,
Josh

Josh Podoll
Williams & Connolly LLP
680 Maine Avenue, S.W., Washington, DC 20024
(P) 202-434-5092 | (F) 202-434-5029
apodoll@wc.com | www.wc.com/ajoshuapodoll

From: Obaro, Bambo <Bambo.Obaro@weil.com>

Sent: Friday, August 9, 2024 4:50 PM

To: Musser, Susan <smusser@ftc.gov>

Cc: Brenner, Nathan <nbrenner@ftc.gov>; sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke <Luke.Sullivan@weil.com>; Dickinson, Charles <cdickinson@ftc.gov>; Anderson, Barrett <banderson1@ftc.gov>; ChristopherKayser-contact <cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai, Rohan <rpai@ftc.gov>; TaniaManners-contact <tmanners@lvklaw.com>; Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; matthew.wolf@arnoldporter.com; Mainigi, Enu <EMainigi@wc.com>; Podoll, A. Joshua <APodoll@wc.com>; Perry, Mark <Mark.Perry@weil.com>; Barrington, Luna <Luna.Barrington@weil.com>; john.holler@arnoldporter.com; Wint, Corene <cwint@ftc.gov>

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Hi Susan,

There are no blackout dates for the Kroger witnesses for week one.

Thanks,
Bambo

On Aug 9, 2024, at 1:30 PM, Musser, Susan <smusser@ftc.gov> wrote:

Bambo –

Do you all have an update regarding when you will be able to provide dates Kroger/Albertsons witnesses are unavailable. Once we know when you will be able to provide those dates, we can discuss whether/when it makes sense to exchange projected witness order.

Many thanks,

Susan

From: Musser, Susan

Sent: Wednesday, August 7, 2024 5:14 PM

To: Obaro, Bambo <Bambo.Obaro@weil.com>; Brenner, Nathan <nbrenner@ftc.gov>

Cc: sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke <Luke.Sullivan@weil.com>; Dickinson, Charles <cdickinson@ftc.gov>; Anderson, Barrett <banderson1@ftc.gov>; ChristopherKayser-contact <cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai, Rohan <rpai@ftc.gov>; TaniaManners-contact <tmanners@lvklaw.com>; Hiemstra

Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>; matthew.wolf@arnoldporter.com; emainigi@wc.com;
apodoll@wc.com; Perry, Mark <Mark.Perry@weil.com>; Barrington, Luna
<Luna.Barrington@weil.com>; john.holler@arnoldporter.com; Wint, Corene
<cwint@ftc.gov>

Subject: RE: 3:24-cv-00347-AN Federal Trade Commission et al v. Kroger Company et al
| Status Conference

Counsel –

For Kroger and Albertsons witnesses listed on Plaintiffs' witness list, can you please provide dates your witnesses are unavailable to testify during the preliminary injunction proceeding. Separately, would Defendants' tech personnel be available for a tech walk through after our pretrial conference on the 23? Unfortunately, Plaintiffs' tech personnel are unavailable the 22.

Best,

Susan

From: Obaro, Bambo <Bambo.Obaro@weil.com>

Sent: Wednesday, August 7, 2024 8:37 AM

To: Brenner, Nathan <nbrenner@ftc.gov>

Cc: Musser, Susan <smusser@ftc.gov>; sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke <Luke.Sullivan@weil.com>; Dickinson, Charles <cdickinson@ftc.gov>; Anderson, Barrett <banderson1@ftc.gov>; ChristopherKayser-contact <cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai, Rohan <rpai@ftc.gov>; TaniaManners-contact <tmanners@lvklaw.com>; Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D <Tim.D.Nord@doj.oregon.gov>; matthew.wolf@arnoldporter.com; emainigi@wc.com; apodoll@wc.com; Perry, Mark <Mark.Perry@weil.com>; Barrington, Luna <Luna.Barrington@weil.com>; john.holler@arnoldporter.com; Wint, Corene <cwint@ftc.gov>

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| Status Conference

Yes, that still works for us. Thank you.

On Aug 7, 2024, at 5:18 AM, Brenner, Nathan <nbrenner@ftc.gov> wrote:

I'll be in transit after 4 this evening.

I'm going to try to move some things around to make 2:30 work. Is that

still good for defendants?

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From: Obaro, Bambo <Bambo.Obaro@weil.com>
Sent: Tuesday, August 6, 2024 11:05:40 PM
To: Brenner, Nathan <nbrenner@ftc.gov>
Cc: Musser, Susan <smusser@ftc.gov>;
sonia.pfaffenroth@arnoldporter.com
<sonia.pfaffenroth@arnoldporter.com>; Sullivan, Luke
<Luke.Sullivan@weil.com>; Dickinson, Charles <cdickinson@ftc.gov>;
Anderson, Barrett <banderson1@ftc.gov>; ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai, Rohan
<rpai@ftc.gov>; TaniaManners-contact <tmanners@lvklaw.com>;
Hiemstra Cheryl <Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>; matthew.wolf@arnoldporter.com
<matthew.wolf@arnoldporter.com>; emainigi@wc.com
<emainigi@wc.com>; apodoll@wc.com <apodoll@wc.com>; Perry, Mark
<Mark.Perry@weil.com>; Barrington, Luna <Luna.Barrington@weil.com>;
john.holler@arnoldporter.com <john.holler@arnoldporter.com>; Wint,
Corene <cwint@ftc.gov>
Subject: Re: 3:24-cv-00347-AN Federal Trade Commission et al v. Kroger
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Unfortunately not. Do you have any availability after 4?

On Aug 6, 2024, at 7:30 PM, Brenner, Nathan
<nbrenner@ftc.gov> wrote:

I have a conflict at 2:30, but I could do between 12:30-2, or
from 3-4. Would either window work for you?

From: Obaro, Bambo <Bambo.Obaro@weil.com>
Sent: Tuesday, August 6, 2024 10:28 PM
To: Brenner, Nathan <nbrenner@ftc.gov>
Cc: Musser, Susan <smusser@ftc.gov>;
sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke
<Luke.Sullivan@weil.com>; Dickinson, Charles
<cdickinson@ftc.gov>; Anderson, Barrett
<banderson1@ftc.gov>; ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall, Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>; TaniaManners-contact
<tmanners@lvklaw.com>; Hiemstra Cheryl

<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
matthew.wolf@arnoldporter.com; emainigi@wc.com;
apodoll@wc.com; Perry, Mark <Mark.Perry@weil.com>;
Barrington, Luna <Luna.Barrington@weil.com>;
john.holler@arnoldporter.com; Wint, Corene
<cwint@ftc.gov>

Subject: Re: 3:24-cv-00347-AN Federal Trade Commission et
al v. Kroger Company et al | Status Conference

Thanks, Nathan. How about 2:30 pm ET tomorrow?

On Aug 6, 2024, at 6:52 PM, Brenner, Nathan
<nbrenner@ftc.gov> wrote:

Thanks, Bambo. We will get this ready for filing
now.

On the confidentiality proposal, I think we are
still further apart than we'd hoped, and so a
meet and confer would be useful in trying to
bridge the gap. Could you propose some times
tomorrow or Thursday to connect?

From: Obaro, Bambo
<Bambo.Obaro@weil.com>
Sent: Tuesday, August 6, 2024 9:46 PM
To: Musser, Susan <smusser@ftc.gov>
Cc: sonia.pfaffenroth@arnoldporter.com;
Sullivan, Luke <Luke.Sullivan@weil.com>;
Dickinson, Charles <cdickinson@ftc.gov>;
Anderson, Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall, Laura
<lhall1@ftc.gov>; Pai, Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>; Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim
D <Tim.D.Nord@doj.oregon.gov>; Brenner,
Nathan <nbrenner@ftc.gov>;
matthew.wolf@arnoldporter.com;
emainigi@wc.com; apodoll@wc.com; Perry,

Mark <Mark.Perry@weil.com>; Barrington,
Luna <Luna.Barrington@weil.com>;
john.holler@arnoldporter.com; Wint, Corene
<cwint@ftc.gov>

Subject: Re: 3:24-cv-00347-AN Federal Trade
Commission et al v. Kroger Company et al |
Status Conference

That works. Thank you.

On Aug 6, 2024, at 5:48 PM,
Musser, Susan
<smusser@ftc.gov> wrote:

Bambo:

How about the following to make
clear the agreed-upon reservation
of rights:

Party Representative: Defendants
have until Friday, August 16,
2024, to identify one officer or
employee per Defendant whom
they propose to serve as that
party's representative at counsel
table for the duration of the
hearing. **Plaintiffs reserve all
rights to object to either
Defendant's designated
representative.**

From: Obaro, Bambo
<Bambo.Obaro@weil.com>
Sent: Tuesday, August 6, 2024
8:39 PM
To: Musser, Susan
<smusser@ftc.gov>;
sonia.pfaffenroth@arnoldporter.c
om; Sullivan, Luke
<Luke.Sullivan@weil.com>;
Dickinson, Charles
<cdickinson@ftc.gov>; Anderson,

Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
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<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>

Cc:

matthew.wolf@arnoldporter.com
; emainigi@wc.com;
apodoll@wc.com; Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
john.holler@arnoldporter.com;
Wint, Corene <cwint@ftc.gov>

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Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Counsel,

Attached are some minor
proposed edits. On the Party
Representative point, while we
agree that each party reserves its
rights with respect to who the
Defendants designate, we think
the language you proposed could
suggest that Defendants
acknowledge that Plaintiffs have a
right to object, so we suggest
taking that language out. You
have our permission to file if you
are okay with our proposed edits.

Thank you,
Bambo

From: Musser, Susan
<smusser@ftc.gov>
Sent: Tuesday, August 6, 2024
3:59 PM
To: Obaro, Bambo
<Bambo.Obaro@weil.com>;
sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke
<Luke.Sullivan@weil.com>;
Dickinson, Charles
<cdickinson@ftc.gov>; Anderson,
Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc:
matthew.wolf@arnoldporter.com
; emainigi@wc.com;
apodoll@wc.com; Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
john.holler@arnoldporter.com;
Wint, Corene <cwint@ftc.gov>
Subject: RE: 3:24-cv-00347-AN
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Conference

Counsel –

Please see attached draft joint stipulation. We did our best to reflect the positions below as well as those agreed to during the

course of the last several meet and confers but please let us know if you have any edits. We made one addition to response to your proposal regarding deposition designations (highlighted in the attached and referenced below). Please let us know if you have any edits or whether we have permission to file. Separately, we will circle up on a response to your confidentiality proposal as well as some times to meet and confer under separate cover.

Thanks,

Susan

Deposition Designations:

While Defendants currently intend to call each of their witnesses live, Defendants recognize that some third parties may be unwilling or unable to appear live at the evidentiary hearing and reserve the right to call those witnesses through designation of depositions taken in this case (including exhibits used during the deposition) with the understanding that Plaintiffs may counter designate from the same deposition and accompanying exhibits.

Defendants will make best efforts

to notify Plaintiffs by the start of
the hearing whether they intend
to present any deposition
designations in lieu of live
testimony. Plaintiffs reserve all
rights to object to Defendants'
designations of deposition in
whole or in part.

From: Obaro, Bambo
<Bambo.Obaro@weil.com>
Sent: Tuesday, August 6, 2024
4:35 PM
To: Musser, Susan
<smusser@ftc.gov>;
sonia.pfaffenroth@arnoldporter.com; Sullivan, Luke
<Luke.Sullivan@weil.com>;
Dickinson, Charles
<cdickinson@ftc.gov>; Anderson,
Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
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apodoll@wc.com; Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;

john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
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Conference

Counsel,

Thank you for your note. Below
are our responses to the issues
raised in your email.

1. **Deposition**

Designations: While
Defendants currently
intend to call each of their
witnesses live, Defendants
recognize that some third
parties may be unwilling or
unable to appear live at the
trial and reserve the right
to call those witnesses
through designation of
depositions taken in this
case (including exhibits
used during the deposition)
with the understanding
that Plaintiffs may counter
designate from the same
deposition.

2. **Sequestration:** We will
inform Plaintiffs of the
identities of each
Defendant's corporate
representative by August
16th. Both sides reserve all
rights in the interim.

3. **Hearing Record:** We
maintain that the record
before the court should be
limited to what is
presented to the court
during the evidentiary
hearing and do not agree
that the parties should be

able to cite to anything in its findings of fact or conclusions of law that was not received in evidence at the preliminary injunction hearing.

4. **Confidentiality:** Attached is an updated draft, revising the FTC's latest proposal for your consideration. We tried to create an opportunity for early indicative rulings on confidentiality while avoiding placing an undue burden on any party in the lead-up to trial. We also built in a meet and confer process to discuss the categories of information the Defendants would intend to keep confidential and built in more time for the parties to exchange potential examination documents.

We are happy to further meet and confer on any of these issues as needed.

Thank you,

<image001.jpg>

Bambo Obaro
Partner

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From: Musser, Susan
<smusser@ftc.gov>
Sent: Tuesday, August 6, 2024
9:06 AM
To:
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Barrett <banderson1@ftc.gov>;
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<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
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<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
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apodoll@wc.com; Perry, Mark
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Barrington, Luna
<Luna.Barrington@weil.com>;
Obaro, Bambo
<Bambo.Obaro@weil.com>;
john.holler@arnoldporter.com
Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Counsel –

I write to follow up on yesterday's
meet and confer regarding a few
discrete issues.

1. ***Deposition Designations:***

Our understanding is that Defendants intend to present certain witnesses by deposition designation in lieu of live testimony.

While Plaintiffs reserve all rights to object to the presentation of any particular witness by designation, we will not categorically object to presentation of Defendants' witnesses by designation so long as Defendants agree to allow counter-designations of declarations, investigational hearings as well as depositions taken in this case. To that end, can Defendants propose a date by which they will identify which witnesses they intend to present by deposition designation and a proposed date for any counter-designations or any objections to the inclusion of said testimony in whole or in part. Please note that Plaintiffs do not agree to limit either party's ability to cite to investigational hearing, depositions, or declarations taken in this case in any briefing or in findings of fact or conclusions of law.

1. ***Sequestration:*** Further to yesterday's conversation, we propose changing the language in the joint stipulation to the following:

Fact witnesses shall be sequestered and not attend the testimony of other fact witnesses during the hearing, and testimony of other fact witnesses shall not be disclosed to or accessed by them.

Defendants have until Friday, August 16, 2024, to identify one fact witness per Defendant whom they propose to serve as that party's representative at counsel table for the duration of the hearing. Counsel for Plaintiffs shall have until August 23, 2024 to object to Defendants' designations. Expert witnesses will not be sequestered and may attend or review fact witness testimony.

1. **Hearing Record:** In the spirit of compromise, we are willing to agree to the following (in the event the parties are unwilling to reach agreement, Plaintiffs reserve all rights to advocate that the record include the full evidentiary record in the Part 3 proceeding): For the purposes of this proceeding, the record before the Court shall include anything submitted in briefing before the Court, presented at the preliminary injunction hearing, or cited in findings of fact or conclusions of

law.

Finally, we understand that Defendants are considering our proposal on confidentiality. In the event that the parties are unable to reach alignment before tomorrow's conference we propose that we agree to submit either a joint proposal or dueling proposals to the court this Friday.

We are happy to meet and confer on any of the above.

Best,

Susan

From: Pfaffenroth, Sonia Kuester
<Sonia.Pfaffenroth@arnoldporter.com>

Sent: Monday, August 5, 2024
2:43 PM

To: Musser, Susan
<smusser@ftc.gov>;
Luke.Sullivan@weil.com;
Dickinson, Charles
<cdickinson@ftc.gov>; Anderson,
Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
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Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc: Wolf, Matthew M.

<Matthew.Wolf@arnoldporter.com>; emainigi@wc.com;
apodoll@wc.com; Perry, Mark
<Mark.Perry@weil.com>;
Luna.Barrington@weil.com;
Bambo.Obaro@weil.com; Holler,
John
<John.Holler@arnoldporter.com>
Subject: RE: 3:24-cv-00347-AN
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Conference

6pm works for us – thanks.

Sonia Pfaffenroth
Partner | [Bio](#)

<image002.png>

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Sonia.Pfaffenroth@arnoldporter.com
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From: Musser, Susan
<smusser@ftc.gov>
Sent: Monday, August 5, 2024
10:42 AM
To:
zzz.External.Luke.Sullivan@weil.com <Luke.Sullivan@weil.com>;
Dickinson, Charles
<cdickinson@ftc.gov>; Anderson,
Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>

[v>](#); Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc: Pfaffenroth, Sonia Kuester
<Sonia.Pfaffenroth@arnoldporter.com>; Wolf, Matthew M.
<Matthew.Wolf@arnoldporter.com>;
zzz.External.emainigi@wc.com
<emainigi@wc.com>;
zzz.External.apodoll@wc.com
<apodoll@wc.com>; Perry, Mark
<Mark.Perry@weil.com>;
zzz.External.Luna.Barrington@weil.com
<Luna.Barrington@weil.com>;
zzz.External.Bambo.Obaro@weil.com <Bambo.Obaro@weil.com>;
Holler, John
<John.Holler@arnoldporter.com>
Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
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Conference

External E-mail

Good morning –

Please see our counter-proposal regarding confidentiality. Separately, please let us know when Defendants are available to meet and confer this evening after the exchange of witness lists. We can be available any time after 6:00 pm or tomorrow morning.

Susan

From: Sullivan, Luke
<Luke.Sullivan@weil.com>

Sent: Thursday, August 1, 2024

3:56 PM

To: Musser, Susan

<smusser@ftc.gov>; Dickinson,

Charles <cdickinson@ftc.gov>;

Anderson, Barrett

<banderson1@ftc.gov>;

ChristopherKayser-contact

<cjkayser@lvklaw.com>; Hall,

Laura <lhall1@ftc.gov>; Pai,

Rohan <rpai@ftc.gov>;

TaniaManners-contact

<tmanners@lvklaw.com>;

Hiemstra Cheryl

<Cheryl.Hiemstra@doj.oregon.gov

>; Nord Tim D

<Tim.D.Nord@doj.oregon.gov>;

Brenner, Nathan

<nbrenner@ftc.gov>

Cc:

sonia.pfaffenroth@arnoldporter.com;

matthew.wolf@arnoldporter.com

; Mainigi, Enu

<EMainigi@wc.com>; Podoll, A.

Joshua <APodoll@wc.com>;

Perry, Mark

<Mark.Perry@weil.com>;

Barrington, Luna

<Luna.Barrington@weil.com>;

Obaro, Bambo

<Bambo.Obaro@weil.com>;

john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN

Federal Trade Commission et al v.

Kroger Company et al | Status

Conference

Thank you. We can do 2:00

PM. We'll send an invitation.

<image001.jpg>

Luke Sullivan

Weil, Gotshal & Manges LLP
2001 M Street NW, Suite 600
Washington, DC 20036
Luke.Sullivan@weil.com
+1 202 682 7006 Direct
+1 202 857 0940 Fax

From: Musser, Susan

<smusser@ftc.gov>

Sent: Thursday, August 1, 2024

1:30 PM

To: Sullivan, Luke

<Luke.Sullivan@weil.com>;

Dickinson, Charles

<cdickinson@ftc.gov>; Anderson,

Barrett <banderson1@ftc.gov>;

ChristopherKayser-contact

<cjkayser@lvklaw.com>; Hall,

Laura <lhall1@ftc.gov>; Pai,

Rohan <rpai@ftc.gov>;

TaniaManners-contact

<tmanners@lvklaw.com>;

Hiemstra Cheryl

<Cheryl.Hiemstra@doj.oregon.gov>;

Nord Tim D

<Tim.D.Nord@doj.oregon.gov>;

Brenner, Nathan

<nbrenner@ftc.gov>

Cc:

sonia.pfaffenroth@arnoldporter.com;

matthew.wolf@arnoldporter.com

; Mainigi, Enu

<EMainigi@wc.com>; Podoll, A.

Joshua <APodoll@wc.com>;

Perry, Mark

<Mark.Perry@weil.com>;

Barrington, Luna

<Luna.Barrington@weil.com>;

Obaro, Bambo

<Bambo.Obaro@weil.com>;

john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Luke –

We are available from 2-4
tomorrow.

Susan

From: Sullivan, Luke
<Luke.Sullivan@weil.com>
Sent: Thursday, August 1, 2024
11:34 AM
To: Dickinson, Charles
<cdickinson@ftc.gov>; Musser,
Susan <smusser@ftc.gov>;
Anderson, Barrett
<banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc:
sonia.pfaffenroth@arnoldporter.com;
matthew.wolf@arnoldporter.com
; Mainigi, Enu
<EMainigi@wc.com>; Podoll, A.
Joshua <APodoll@wc.com>;
Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
Obaro, Bambo

<Bambo.Obaro@weil.com>;
john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Charlie –

Thank you. This works for
Defendants. So the parties are
in agreement that they will
exchange final witness lists on
Monday, August 5, 2024 at 5pm
ET.

Additionally, Friday afternoon
should work for us to meet and
confer on the pre-trial order.
Could you please propose some
time windows?

Luke

<image001.jpg>

Luke Sullivan

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Washington, DC 20036
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+1 202 682 7006 Direct
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From: Dickinson, Charles
<cdickinson@ftc.gov>

Sent: Wednesday, July 31, 2024
11:22 PM

To: Musser, Susan

<smusser@ftc.gov>; Sullivan, Luke
<Luke.Sullivan@weil.com>;
Anderson, Barrett
<banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
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<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
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Cc:

sonia.pfaffenroth@arnoldporter.com;
matthew.wolf@arnoldporter.com
; Mainigi, Enu
<EMainigi@wc.com>; Podoll, A.
Joshua <APodoll@wc.com>;
Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
Obaro, Bambo
<Bambo.Obaro@weil.com>;
john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Luke,

We are amenable to agreeing to
an exchange of final witness lists
on Monday, August 5, 2024 at
5pm ET, provided that the other
provisions of paragraph 13(b) of
the CMSO would apply to this
early exchange. For the avoidance
of doubt, additional witnesses

could be added after August 5, 2024 only by agreement of the parties or with leave of the Court for good cause shown. Does this work for Defendants?

Sincerely,
Charlie

From: Musser, Susan
<smusser@ftc.gov>
Sent: Wednesday, July 31, 2024
11:09 AM
To: Sullivan, Luke
<Luke.Sullivan@weil.com>;
Anderson, Barrett
<banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>; Dickinson,
Charles <cdickinson@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc:
sonia.pfaffenroth@arnoldporter.com;
matthew.wolf@arnoldporter.com
; Mainigi, Enu
<EMainigi@wc.com>; Podoll, A.
Joshua <APodoll@wc.com>;
Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
Obaro, Bambo
<Bambo.Obaro@weil.com>;
john.holler@arnoldporter.com
Subject: RE: 3:24-cv-00347-AN

Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Luke –

We will confirm August 7 with Chambers. Separately, we are available Friday afternoon or Monday morning to meet and confer regarding your draft pre-trial order. We will endeavor to send a response prior to that meeting. On your request regarding departing from the agreed-upon dates regarding the scheduling order, we will get back to you.

Best,

Susan

From: Sullivan, Luke
<Luke.Sullivan@weil.com>
Sent: Tuesday, July 30, 2024
10:18 PM
To: Musser, Susan
<smusser@ftc.gov>; Anderson,
Barrett <banderson1@ftc.gov>;
ChristopherKayser-contact
<cjkayser@lvklaw.com>; Hall,
Laura <lhall1@ftc.gov>; Pai,
Rohan <rpai@ftc.gov>; Dickinson,
Charles <cdickinson@ftc.gov>;
TaniaManners-contact
<tmanners@lvklaw.com>;
Hiemstra Cheryl
<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D
<Tim.D.Nord@doj.oregon.gov>;
Brenner, Nathan
<nbrenner@ftc.gov>
Cc:
[sonia.pfaffenroth@arnoldporter.c](mailto:sonia.pfaffenroth@arnoldporter.com)

[om](#);
matthew.wolf@arnoldporter.com
; Mainigi, Enu
<EMainigi@wc.com>; Podoll, A.
Joshua <APodoll@wc.com>;
Perry, Mark
<Mark.Perry@weil.com>;
Barrington, Luna
<Luna.Barrington@weil.com>;
Obaro, Bambo
<Bambo.Obaro@weil.com>;
john.holler@arnoldporter.com

Subject: RE: 3:24-cv-00347-AN
Federal Trade Commission et al v.
Kroger Company et al | Status
Conference

Hi Susan –

August 7th at 9:00 am PST
works for Defendants for a
remote status conference. On
the topics to discuss, we put
together a draft pre-trial order,
which is attached. Can you
please let us know if the FTC
has any edits to the draft, or
provide some windows when
the FTC is available to confer?

In addition, we wanted to raise
final witness lists in the District
of Oregon. Under the CMSO,
final witness lists are due on
August 7. However, given the
need for party and third-party
witnesses to arrange their
schedules to attend trial—
which falls during a time when
many people take vacations, as
well as labor day weekend—
Defendants propose that the
parties agree to exchange final

witness lists for the District of Oregon proceeding on Friday, August 2. Moving this deadline up will provide additional notice to party and third-party witnesses, and it will not prejudice either party given that (a) fact and expert discovery are closed, and (b) the parties have already served final witness lists for Part 3. Please let us know if the FTC will agree to this proposal.

Best,
Luke

<image001.jpg>

Luke Sullivan

Weil, Gotshal & Manges LLP
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+1 202 857 0940 Fax

From: Musser, Susan

<smusser@ftc.gov>

Sent: Tuesday, July 30, 2024 2:06 PM

To: Pfaffenroth, Sonia Kuester

<Sonia.Pfaffenroth@arnoldporter.com>; Wolf, Matthew M.

<Matthew.Wolf@arnoldporter.com>;

zzz.External.emainigi@wc.com

<emainigi@wc.com>;

zzz.External.Bambo.Obaro@weil.com <Bambo.Obaro@weil.com>;

zzz.External.apodoll@wc.com

<apodoll@wc.com>

Cc: Anderson, Barrett

<banderson1@ftc.gov>;

ChristopherKayser-contact

<cjkayser@lvklaw.com>; Hall,

Laura <lhall1@ftc.gov>; Pai,

Rohan <rpai@ftc.gov>; Dickinson,

Charles <cdickinson@ftc.gov>;

TaniaManners-contact

<tmanners@lvklaw.com>;

Hiemstra Cheryl

<Cheryl.Hiemstra@doj.oregon.gov>; Nord Tim D

<Tim.D.Nord@doj.oregon.gov>;

Brenner, Nathan

<nbrenner@ftc.gov>

Subject: 3:24-cv-00347-AN

Federal Trade Commission et al v.

Kroger Company et al | Status

Conference

External E-mail

Counsel:

I write to follow up on our discussions last Friday with Judge Nelson's courtroom deputy regarding a remote status conference. Can you confirm that the proposed date of August 7th at 9:00 am PST works for Defendants? If so, we can reach out to Chambers to confirm that date. Separately, do you have availability Friday afternoon to meet and confer regarding topics to cover at the status conference and your position regarding the same?

Best,

Susan

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